

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5924 of 1984

Date of decision: 26-12-1996

For Approval and Signature

The Hon'ble Mr. Justice S. K. KESHOTE

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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H.S. BALANEY

Versus

STATE OF GUJARAT  
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Appearance:

MR PM THAKKAR for Petitioner

Mr. V. B. Gharania for Respondent No. 1, 2  
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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 26/12/96

ORAL JUDGEMENT

The grievance made in this petition is an example of how a retired person is made to suffer hardship after

serving the Government for long time. The petitioner had served the Government for 30 years and retired as Executive Engineer on 30th April, 1984. The respondents have not released his post retirement benefits and therefore he filed the present petition. Prayer has been made for direction to the respondents to give him full post retirement benefits.

2. Reply to the writ petition has been filed and the respondents have come up with the defence that 80 per cent admissible pension was ordered to be released in favour of the petitioner, and 20 per cent pension will be released on completion of the inquiry pending against him. So far as gratuity is concerned, defence has been taken that pending inquiry it has to be retained by the Government. The case of the petitioner is that no inquiry whatsoever was pending against him and as such retention of post retirement benefits of the petitioner was wholly arbitrary and illegal.

3. On 3rd September, 1988 the matter had come up before this court and the court gave direction to the respondents to disclose before the court latest by 10-9-1988 as to whether any departmental inquiry is pending against the petitioner or not. More than eight years have passed, but the respondents have not disclosed which inquiry is pending against the petitioner. In the reply which was filed by the respondents in the year 1986 they have not given out the details of the inquiry, if any, pending against the petitioner. The petitioner has come up with the case that no inquiry was pending against him. The petitioner stated in the petition that in special criminal case No.8/82 in which he was one of the accused, he has been acquitted by the court on 20th March, 1983. The decision of the criminal court, acquitting the petitioner, was challenged by the respondents by filing revision application before this court, but that revision application was withdrawn on 17th August, 1983. Pending the criminal case the petitioner was placed under suspension, but after acquittal his suspension was not recalled, and he was compelled to approach this court by filing special civil application No.2014 of 1984 and then only the order of suspension was withdrawn.

4. The fact that the respondents have failed to disclose before this court what inquiry is pending against the petitioner is sufficient to hold that withholding of retirement benefits of the petitioner is illegal, arbitrary and unjust. It is a case where lawful amount due to the petitioner has been withheld by the

respondents without any justification and cause. The petitioner, a retired officer, has been deprived of the amount of retirement benefits, and consequent thereof he has been deprived of the interest also on the said amount. It is a fact, notice of which can be taken by the court, that on retirement an officer who gets the post retirement benefits would invest the amount in any financial institution or in securities to earn regular income by way of interest or dividend. The petitioner could not get that benefit on the amount withheld by the respondents. This court cannot be oblivious of the fact that the respondents are wholly and solely responsible for the aforesaid loss suffered by the petitioner for all these years, and as such they have to compensate the petitioner for the same.

5. In the case of Union of India vs. S.S. Sandhawalia, J.T. 1994(1) SC 62, the Supreme Court justified the award of interest by High Court on the amount of withheld post retirement benefits as well as other benefits payable to the respondent therein. In that case interest was awarded at the rate of 12% per annum. It is a fact that on long-term deposits the interest would be more than 14 to 15%. That benefit could not be availed of by the petitioner. The petitioner cannot be allowed to suffer only because of the arbitrary and perverse approach of the respondents.

6. In the result this special civil application succeeds. It is hereby declared that withholding of post retirement benefits to the petitioner to the extent of 20% pension as well as the amount of gratuity is wholly arbitrary and unjust. Respondents are directed to make payment to the petitioner of the amount of pension and gratuity which has been withheld, within a period of three months from the date of receipt of certified copy of this order. Respondents are further directed to pay interest on the amount of pension and gratuity as aforesaid to the petitioner at the rate of 12% per annum from the date of filing of this special civil application, ie. 29th November, 1984 (say 1st December, 1984), together with the principal amount. It is a case where a retired officer has been unnecessarily harassed without there being any justification. On 3-9-1986 this Court had given specific direction to the respondents to disclose as to whether any departmental inquiry is pending against the petitioner, but it has not been done, meaning thereby, the respondents have accepted the position that no inquiry is pending. I do not find any justification on the part of the respondents in withholding the post retirement benefits of the

petitioner. The respondents are therefore directed to pay Rs.2,000/- (Two thousand only) to the petitioner as and by way of cost of this writ petition. The counsel for the petitioner has no objection in case this amount of cost is ordered to be deposited by the respondents in the office of the Bar Council of Gujarat in the account of Advocates' Welfare Fund. Order accordingly. Respondents are directed to deposit the mount of cost of Rs.2,000/- in the office of the Bar Council of Gujarat in the account of Advocates' Welfare Fund within a period of two months from the date of receipt of certified copy of this order. Receipt for the deposit of the amount of cost shall be placed on the file of these proceedings. A copy of this judgment and order shall be sent to the Bar Council of Gujarat. In case the amount of cost as directed above is not deposited by the respondents, it shall be open to the Bar Council of Gujarat to take appropriate steps in the matter. Rule made absolute accordingly.

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